

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 2
FOR THE REGULAR MEETING OF
TUESDAY, SEPTEMBER 16, 2008
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

RESOLUTIONS:

NOTE: This item may be taken in the morning session if time permits.

ITEM-S500: Revised Council Policy 700-10 Disposition of City-Owned Real Property.

[► View referenced exhibit back-up material \(Part 1 of 2\).](#)

[► View referenced exhibit back-up material \(Part 2 of 2\).](#)

(See Reports to the City Council No. 07-110 and 07-120; Independent Budget Analyst Reports No. 08-93 and 07-67; Current Council Policy 700-10; Current Council Policy 700-10 Strike-Out version; Power Point regarding Council Policy 700-10, dated 7/11/2007; Grubb & Ellis’ 1/31/2007, Best Practices Methodology Report; Grubb & Ellis’ 6/13/2007, Power Point; and Linda Vista Village S.D. Homeowners Association’s 7/10/2007, letter.)

(Continued from the meeting of September 8, 2008, Item 201, at the request of Mayor Sanders, for further review.)

TODAY’S ACTION IS:

Adopt the following resolution:

(R-2009-77)

Amending Council Policy 700-10, “Disposition of City-Owned Property,” as set forth in the Council Policy;

Instructing the City Clerk to add the aforesaid in the Council Policy Manual.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S500: (Continued)

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 7/11/2007, LU&H voted 4 to 0 to approve the changes to Council Policy 700-10, and to include the following recommendations by the Independent Budget Analyst and Chair Madaffer:

1. Add language in the Policy that requires an economic analysis of lease vs. sale be presented to Council for each property;
2. Require additional City departmental review, including Planning, and Engineering and Capital Projects;
3. Add language that includes City Council in the Government Clearance Process to allow preliminary review by Council staff to comment on "foreseeable uses" of property;
4. Clarify the method of sale language in the enabling resolution or add language that states "possible methods of sale" will be identified in the enabling resolution;
5. Re-number or letter entire Policy for structural consistency;
6. Add a definition and description of the Portfolio Plan at the beginning of the Policy (including both lease and for sale), and add language about requiring an annual Portfolio Plan presentation to the full City Council.
 - a. Suggested language:
 - The Real Estate Assets Department shall prepare and present to the City Council a comprehensive Portfolio Management Plan on an annual basis, with periodic reviews and as-needed updates at City Council Committee. The Portfolio Management Plan shall include an overall review of the City's real estate portfolio (or inventory), an operating plan for corporate property, a disposition plan for surplus property, market research to support anticipated transactions and a request for authority to act within defined parameters (as described in this policy).
 - b. The major elements of the portfolio Plan are to include:
 - Property evaluation and characterization of real estate assets
 - Strategy for City occupied real estate
 - Investment portfolio plan (Leases to for profit tenants)
 - Review of not-for-profit leases
 - Disposition Plan for surplus assets
 - Business Case development review
 - Legal document development and review

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S500: (Continued)

7. The addition of an exclusionary provision in Section F. "The City reserves the right to exclude from any listing agreement the name of any buyer whose interest in a purchase of the subject property has been made a part of the record prior to the execution of such agreement";
8. Require Council review in one year for effectiveness of Policy changes.

(Councilmembers Atkins, Young, Madaffer, and Hueso voted yea.)

SUPPORTING INFORMATION:

The proposed revisions to Council Policy 700-10 will provide a framework by which to manage and maximize the City's real estate assets. The proposed changes will establish practices for the sale and leasing of City property as part of an overall portfolio management plan.

The procedures for sale of City property include:

- A detailed analysis process for determining if a property should be sold.
- Direction through the Government Clearance Process.
- The process by which properties are approved by the City Council for sale at pre-approved minimum prices and methods of sale.
- Marketing process for properties.
- Guidelines for use of Real Estate brokers if appropriate.

A summary of the changes regarding the leasing of City-owned property is as follows:

- The rate of return for leased property will be based on an appraisal that complies with the Uniform Standards of Professional Appraisal Practice (USPAP).
- More specific requirements for the establishment of percentage rents and minimum rents for percentage rate leases.
- Percentage rate adjustment every 10 years to current fair market rents for percentage rate leases.
- Market rate adjustments every 10 years and Consumer Price Index Adjustments in interval terms between market rate adjustments for flat rate leases.
- Rent arbitration process for situations where the City and lessee cannot agree on new rent for a rental period under review.
- Defined Appraisal Assumptions.
- Required analysis of level of capital improvements and economic life expectancy of the development in order to determine length of lease term.
- Clearly defined maximum leasehold financing and refinancing restrictions including a requirement for substantial benefit to the City in refinancing situations.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S500: (Continued)

SUPPORTING INFORMATION: (Continued)

- Specification that the maintenance to improvements and the costs for utilities are the responsibility of the lessee.
- Requirement that requests for assignment of leasehold interests will be evaluated with the same criteria as new leasehold proposals and may include additional consideration to the City.
- New requirements for lease extensions and renewals based on investment to City property and sound business practices in order to determine the appropriate length of any new term.
- Requirement that agreements provide the City the right to assume ownership of the leasehold improvements at the end of the lease. In the event that the lessee is granted an extension, the City may be compensated by an amount equal to the change in present value attributable to the deferral of the reversionary interest.
- Standard requirement for security deposit for new leases in an amount equivalent to three month's rent.
- Requisite that the City may charge a transaction processing fee in accordance to Administrative Regulation 95.25.

The newly revised Council Policy 700-10 will act as an overarching policy document with respect to the leasing of City-owned property. New or amended sub-policies tailored to the needs of specific tenant groups, such as, Balboa Park, Mission Bay Park, Non-Profit organizations, Agricultural lands, Airports and Telecommunication Sites will follow. In the event of a conflict between the revised Council Policy 700-10 and the tenant specific sub-policy, the sub-policy will prevail.

FISCAL CONSIDERATIONS:

The revisions to Council Policy 700-10 will establish procedures for the sale and leasing of the City's surplus property that will maximize the value of the City's real estate assets.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Presentation to the Rules Committee on April 11, 2007; Presentation to the Land Use and Housing Committee on June 13, 2007; The proposed changes to Council Policy 700-10 were approved 4-0 by the Land Use and Housing Committee on July 11, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Outreach and presentations of the proposed changes were presented in several public forums including the Mission Bay Lessee's Association Meeting, a Lessee meeting, and a Lessee Town Hall Meeting on December 13, 2007.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S500: (Continued)

SUPPORTING INFORMATION: (Continued)

These meetings included attendees representing all different facets of lessee groups. The proposed changes have been posted on the City's website since June 2007.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The recommended changes to Council Policy 700-10 will enable the City to manage its real estate assets in a more efficient and productive manner that will allow the City to maximize their value.

Barwick/Anderson

ADOPTION AGENDA, DISCUSSION, HEARINGS

NOTICED HEARINGS:

NOTE: This item may be taken in the morning session if time permits.

ITEM-S501: 3953 Centre Tentative Map, Project No. 79752. Appeal of Planning Commission's decision approving an application for a Tentative Map to convert 21 existing residential units to condominiums and a request to waive the requirements to underground existing overhead utilities on a 16,540 square-foot site located at 3953 Centre Street. (Uptown Community Plan Area. District 3.)

► [View referenced exhibit back-up material.](#)

Matter of the appeal by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation, from the decision by the Planning Commission approving an application for a Tentative Map to convert 21 existing residential units to condominiums and a request to waive the requirements to underground existing overhead utilities on a 16,540 square-foot site located at 3953 Centre Street in the MR-800B Zone of Mid-City Communities Planned District within the Uptown Community Plan.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the City and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act on August 31, 2005, and the opportunity to appeal that determination ended September 15, 2005.

(TM No. 248795/Waiver of requirement to underground existing overhead utilities.)

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S501: (Continued)

(Continued from the meeting of September 9, 2008, Item 355, at the request of Council President Peters, for full Council.)

NOTE: Hearing closed. Testimony taken.

STAFF'S RECOMMENDATION:

Take the following actions:

Granting or denying the appeal and upholding or overturning the decision by the Planning Commission approving Tentative Map No. 248795 and approving the waiver to the requirement to underground existing overhead utilities;

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on June 12, 2008, voted 5-1-1 to approve.

Ayes: Otsuji, Golba, Schultz, Naslund, Ontai

Nays: Griswold

Not present: Smiley

The Uptown Planners has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

That the City Council deny these eight project appeals and approve the condominium conversion projects listed on the attached spreadsheet (Attachment 1), in various community plans.

STAFF RECOMMENDATION: DENY the appeals and APPROVE the Tentative Maps for all eight projects, including the Coastal Development Permit for Leilani Bay, PTS 105191.

EXECUTIVE SUMMARY:

This Executive Summary describes eight condominium conversion projects that were approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 2).

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S501: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

The appeal language is the same for all eight projects included in this group and is not specific to any individual project features, therefore one Executive Summary is provided. Please note these are project appeals not environmental appeals, therefore the environmental issues raised are not relevant to these project appeals.

All of the projects included in this group were determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision has either expired or an appeal of the CEQA exemption has been previously heard and rejected by the City Council.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA related and may be addressed through this project appeal. These codes sections and staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* All of the condominium projects included in this group have been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations, as appropriate. Although some of the projects do not comply with the current requirements for new construction, they are allowed to maintain their current configuration because no additional units or expansions are proposed and they are considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *"The decision-maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources."*

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S501: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

All of the condominium projects included in this group have been approved by the Planning Commission, who was the decision-maker required to make this finding. Staff believes the intent of this required finding is to respond to “leapfrog” development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City’s inclusionary housing requirements. All of the projects in this group would comply with the City’s requirements either by paying an in-lieu fee or by providing onsite affordable housing. None of the projects are requesting a variance or waiver from the inclusionary housing requirements, therefore, these code sections are not relevant to these approved condominium conversion projects.

The appeal also asserts that the Housing Element of the City’s General Plan has become invalid due to the City’s failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. All of the projects in this group were approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City’s Housing Element has never been considered invalid and would not be grounds for denial of these projects.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

All eight condominium projects included in this group have been heard and issued a recommendation from the appropriate Community Planning Group and all of the projects have been approved by the Planning Commission.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S501: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Please reference the attached spreadsheet for property owners. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Anderson/Broughton

Staff: William Zounes – (619) 687-5942

Karen Heumann – Deputy City Attorney

NOTE: This item is not subject to the Mayor's veto.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

NOTE: This item may be taken in the morning session if time permits.

ITEM-S502: 4611 Ohio Tentative Map, Project No. 83623. Appeal of the decision by the Planning Commission approving an application for a Tentative Map and a waiver of the requirement to underground the existing overhead utilities, to convert 36 existing residential units to condominiums. (North Park Community Plan Area. District 3.)

► [View referenced exhibit back-up material.](#)

Matter of the appeal by Cory J. Briggs, Briggs Law Corporation, filed on behalf of Citizens for Responsible Equitable Environmental Development, regarding the decision of the Planning Commission approving an application for a Tentative Map and a waiver of the requirement to underground the existing overhead utilities, to convert 36 existing residential units to condominiums, on a 0.75-acre site located at 4611 Ohio Street, in the MR-800B Zone of the Mid-City Communities Planned District, within the Greater North Park Community Plan Area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the City and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have the rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

(Continued from the meeting of September 9, 2008, Item 345, at the request of Council President Peters, for full Council.)

NOTE: Hearing closed. Testimony taken.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S502: (Continued)

STAFF'S RECOMMENDATION:

Take the following actions:

Granting or denying the appeal and granting or denying the Tentative Map No. 263258 including the request to waive the requirement to underground existing overhead utilities, with appropriate findings to support Council action;

Directing the City Attorney to prepare the appropriate resolution according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on July 24, 2008, voted 4-2-1 to approve Tentative Map No. 263258; and approve waiver to the requirement to underground existing overhead utilities as presented in Report No. PC-08-094.

Ayes: Naslund, Ontai, Otsuji, Golba
Nays: Schultz, Griswold
Not present: Smiley

The Greater North Park Community Planning Group has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

That the City Council deny these eight project appeals and approve the condominium conversion projects listed on the attached spreadsheet (Attachment 1), in various community plans.

STAFF RECOMMENDATION:

DENY the appeals and APPROVE the Tentative Maps for all eight projects, including the Coastal Development Permit for Leilani Bay, PTS 105191.

EXECUTIVE SUMMARY:

This Executive Summary describes eight condominium conversion projects that were approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 2). The appeal language is the same for all eight projects included in this group and is not specific to any individual project features, therefore one Executive Summary is provided. Please note these are project appeals not environmental appeals, therefore the environmental issues raised are not relevant to these project appeals.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S502: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

All of the projects included in this group were determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision has either expired or an appeal of the CEQA exemption has been previously heard and rejected by the City Council.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA related and may be addressed through this project appeal. These codes sections and staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempt's condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) applies is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* All of the condominium projects included in this group have been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations, as appropriate. Although some of the projects do not comply with the current requirements for new construction, they are allowed to maintain their current configuration because no additional units or expansions are proposed and they are considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *"The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources."* All of the condominium projects included in this group have been approved by the Planning Commission, who was the decision maker required to make this finding. Staff believes the intent of this required finding is to respond to "leapfrog" development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid. **SDMC Sections 142.1304 and 142.1305:** These sections describe the requirements for approving a variance or waiver from the City's inclusionary housing requirements.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S502: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

All of the projects in this group would comply with the City's requirements either by paying an in-lieu fee or by providing onsite affordable housing.

None of the projects are requesting a variance or waiver from the inclusionary housing requirements, therefore, these code sections are not relevant to these approved condominium conversion projects.

The appeal also asserts that the Housing Element of the City's General Plan has become invalid due to the City's failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. All of the projects in this group were approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City's Housing Element has never been considered invalid and would not be grounds for denial of these projects.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

All eight condominium projects included in this group have been heard and issued a recommendation from the appropriate Community Planning Group and all of the projects have been approved by the Planning Commission.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Please reference the attached spreadsheet for property owners. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Staff: Paul Godwin – (619) 446-5103
Karen Heumann – Deputy City Attorney

NOTE: This item is not subject to the Mayor's veto.